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October 16, 1956  
Opinion No. 56-149

REQUESTED BY: Graham County Fair Commission

OPINION BY: ROBERT MORRISON, The Attorney General  
FREDERICK E. KALLOF, Assistant Atty. General

QUESTION: Could a county be liable for a tort occurring upon the county fair grounds during an activity where the county fair grounds were leased to a private organization by the county fair commission for compensation?

CONCLUSION: Yes.

The county is authorized to conduct county fair grounds and county fairs pursuant to A.R.S. § 11-251, Subsection 23, which reads as follows:

"§ 11-251. Powers of board

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

\* \* \* \* \*

23. Acquire and hold property for the use of county fairs, and conduct, take care of and manage them."

Whenever the county fair commission is conducting a county fair, the commission is clearly carrying on a governmental function and, therefore, is cloaked with immunity which releases it from liability for torts of its agents.

"On the other hand, a county, if amenable to suit, is liable for its torts when it is acting, not as a governmental agent, but as a private corporation, or in a proprietary capacity, or is performing special duties imposed on it with its consent, or voluntarily assumed by it, or when the tort amounts to an appropriation of property."  
20 C.J.S., Counties, § 215.

In Sawaya v. Tucson High School District No. 1, 78 Ariz. 389, 281 P.2d 105, the Arizona Supreme Court said, at page 393:

" . . . We hold that in leasing the stadium and receiving compensation therefor that the school district was in the exercise of a proprietary function and that in the exercise thereof it was and is liable for injuries sustained as a result of its negligence in the maintenance of said stadium."

Also, in the above case, the Court said, at page 393:

" . . . This seems to be especially true since liability insurance is available to state government and to its subdivisions for the protection of persons who may become injured as a result of a tort committed by an officer, agent or employee of government."

In view of the above judicial expression of our Supreme Court, it is the opinion of this office that the same principles of law apply to counties and county fair commissions whenever the commission leases the fair grounds to others for compensation.

In conclusion, if the fair commission is negligent in the maintenance of the fair grounds and holds the property out for lease for compensation to conduct any activity other than the county fair, then the county could be held liable for injury resulting therefrom for the above reasons.

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